



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Military Base Management, Inc.

File: B-221874.3

Date: August 1, 1986

DIGEST

Protest of alleged solicitation impropriety apparent prior to bid opening must be filed prior to bid opening. Even if the protester's request that the contracting agency revise the solicitation before bid opening is regarded as an agency protest, protest to General Accounting Office (GAO) filed 2 months after bid opening still would be untimely since the agency's proceeding with bid opening without taking action on the protest constituted initial adverse agency action, after which any protest to GAO was required to be filed within 10 working days.

DECISION

Military Base Management, Inc. (MBM), protests any award of a contract under invitation for bids No. N68836-86-B-0010, issued by the Department of the Navy, Naval Supply Center, for mess attendant services at the Naval Air Station, Jacksonville, Florida. MBM did not submit a bid, but it is the parent company of the seventh low bidder. Although the scope of work does not include providing cooks, MBM asserts that, as the incumbent contractor, it learned that cooks will be needed and any contract will have to be modified to provide for them. MBM argues that the procurement should be resolicited under revised specifications reflecting the requirement for cooks.

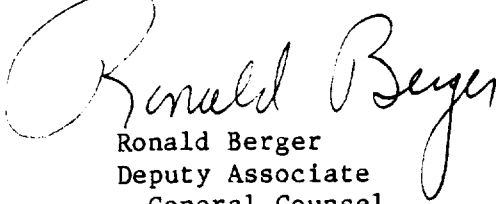
The protest is untimely. Our Bid Protest Regulations state that, to be timely, a protest against improprieties apparent in a solicitation must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1986). MBM states that it requested prior to bid opening that the IFB be revised to reflect the need for cooks. MBM did not file its protest with this Office, however, until May 7, 1986, which was 2 months after bid opening (March 5, 1986).

Even if MBM's request is regarded as an initial protest with the contracting agency, the protest still would be untimely. Where a timely protest is filed with the contracting agency, any subsequent protest to this Office must be filed within 10 working days after the protester has actual or constructive knowledge of initial adverse agency action. As stated in our Bid Protest Regulations, initial adverse agency action occurs when the contracting agency opens bids without taking action on

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the protest. 4 C.F.R. § 21.0(e). At that time, the protester has constructive notice that the contracting agency refused to revise the solicitation. Sunrise Assocs.-- Request for Reconsideration, B-219356.2, June 27, 1985, 85-1 CPD ¶ 738. MBM's protest, filed 2 months after bid opening, obviously was not filed within 10 days of its notice of adverse action.

The protest is dismissed.


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General Counsel